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3
4 UNITED STATES DISTRICT COURT
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA
6 OAKLAND DIVISION

7 MOHAMMAD MINHAI KHOKHAR,

8 Plaintiff,

9 v.

10 AMJAD YOUSUF, et al.,

11 Defendants.
12

Case No: C 15-06043-SBA

Related to

Case No: C 17-01769 SBA (closed)

ORDER DISMISSING ACTION

13 Plaintiff Mohammad Minhaj Khokhar (“Plaintiff”), acting pro se, brings the instant
14 action for breach of contract against Amjad Yousuf (“Amjad”); Zarina Amjad (“Zarina”);
15 Muhammad Ahmad Amjad aka Kamran (“Kamran”); Muammad Abdullah Amjad aka
16 Khawar (“Khawar”); Kashif Mahmood; other members and relatives of Amjad Family;
17 Marhaba Travels and Money Changers; Zamzam Builders & Developers; other businesses
18 or entities under Marhaba, Zamzam, Amjad, and Khawar titles; and partners of Amjad
19 Yousuf and Khawar (collectively “Defendants”). Dkt. 1. Defendants failed to appear or
20 respond to the Complaint, and the Clerk entered their default. Dkt. 18.

21 Thereafter, Plaintiff filed the pending motion for default judgment. Dkt. 32. Upon
22 reviewing the motion, the Court issued an order to show cause why the action should not be
23 dismissed for lack of personal jurisdiction and/or on the ground of *forum non conveniens*.
24 Dkt. 52. Plaintiff has responded to the order to show cause. Dkt. 57. Having read and
25 considered the papers filed in connection with this matter and being fully informed, the
26 Court hereby DISMISSES the action in its entirety, for the reasons stated below.¹

27
28 ¹ The Court, in its discretion, finds this matter suitable for resolution without oral
argument. See Fed. R. Civ. P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

1 **I. BACKGROUND**

2 **A. FACTUAL OVERVIEW**

3 Plaintiff is a citizen of the United States, with residences in both California and
4 Pakistan. Compl. ¶¶ 1(b), 6. Defendants, who are “family members, an employee, and
5 some partners,” are “all citizens of Pakistan.” Id. ¶ 6. Defendants reside in Karachi,
6 Pakistan, although “[s]ome of the Partners also live in Dubai, Abu Dhabi and Saudi
7 Arabia.” Id. ¶ 8. Defendants operate several businesses in Pakistan, including construction
8 and property development businesses. Id. ¶ 7.

9 In “early 2008,” Amjad sought “business investments” from Plaintiff. Id. ¶ 10. In
10 or about July 2008, Plaintiff gave Amjad \$120,482. Id. In September 2009, Plaintiff gave
11 Amjad an additional \$1 million. Id. ¶ 12. The transactions were later documented in a
12 two-page “Agreement” between Plaintiff, on the one side, and Amjad and “Marhabah
13 Travels & Tourism (pvt Ltd.),” on the other. Id. ¶ 17, Dkt. 1-1 pp. 1-3 (“First Agreement”)
14 at 1. It identifies Plaintiff as a resident of both the United States and Pakistan, and
15 identifies Amjad as a resident of Pakistan. Id. The First Agreement provides that it is to be
16 “adjudicated under the laws of the Government of Pakistan.” Id. at 2. “In the event if [*sic*]
17 no justice is provided and received, laws of Dubai or Malaysia or USA may apply.” Id.

18 The First Agreement states that Plaintiff has an outstanding investment of
19 \$1,102,410 with “Mr. Amjad and his company,” and sets forth terms for repayment of the
20 principal and intermittent payment of “profit.” Id. at 1. The investments were for “various
21 projects related to construction and real estate” in Pakistan, with the profits “mainly
22 distributed to charity organizations for education of orphans and salaries of their teachers.”
23 Id. The First Agreement states that “profitability has been about 20%,” but that “Mr.
24 Amjad and [the] [C]ompany agree to do better this year and provide an estimated profit of
25 about 30%,” or possibly as much as 40% profit on “the existing construction project.” Id.
26 The First Agreement provides that Mr. Amjad and the Company were to return the original
27 investment in full by October 23, 2010, but further provides for the return of the original
28 investment funds within 30 days upon demand by Plaintiff. Id. at 1-2.

1 Thereafter, Defendants purportedly violated the First Agreement by, among other
2 things, failing to pay “profits” as agreed. Compl. ¶ 18. Defendants also failed to return the
3 original investment upon demand. Id. ¶ 27. Over the next few years, the parties entered
4 into a series of subsequent agreements to modify the terms of repayment and extend the
5 repayment deadline. As many as six such agreements, variously signed by Amjad, his wife
6 Zarina, and his sons Kamran and Khawar, were executed. One of these agreements
7 contemplated the transfer of a building owned by Defendants to Plaintiff as partial
8 payment. Id. ¶ 49. It appears the transfer was never completed, however. Id. ¶ 67.

9 The last of the agreements, dated December 5, 2014, is titled “Acknowledgment,
10 Confirmation and a Promissory Note Agreement.” Id. ¶ 50, Dkt. 1-1 pp. 21-22 (“Final
11 Agreement”). The two-page agreement, printed on stamp paper with a 50 rupee note, was
12 executed at Amjad’s residence in Karachi. Id. ¶ 51. In the Final Agreement, Amjad agreed
13 to repay the principal with unspecified profits and penalties by no later than January 12,
14 2015. Final Agreement ¶ 2. The Final Agreement purports to bind Amjad “and his entire
15 family.” Id. at 1. It is signed by Amjad and three unidentified “family members,” but not
16 by Zarina, who refused to sign. Id. at 2; Compl ¶ 52. According to Plaintiff, one of the
17 unidentified signatures belongs to Khawar. Id. ¶ 50. The Final Agreement provides that
18 Plaintiff “can take legal actions against me as per previous agreements in any courts in
19 Pakistan, Malaysia, or USA.” Final Agreement ¶ 8. According to Plaintiff, Defendants
20 violated the Final Agreement and failed to repay the funds owed. Compl. ¶¶ 54-55.

21 **B. PROCEDURAL HISTORY**

22 On December 23, 2015, Plaintiff initiated the instant action for breach of contract.
23 Dkt. 1. In addition to the loan principal of just over \$1 million, he seeks various damages
24 totaling more than \$30 million. The action was initially assigned to Magistrate Judge Paul
25 Grewal, and later reassigned to Magistrate Judge Laurel Beeler. On May 16, 2016, the
26 Clerk entered default as to all defendants. Dkt. 18.

27 On March 31, 2017, Plaintiff filed a Motion for Default Judgment. Dkt. 32. He
28 seeks damages of over \$30 million on his contractual claim, but seeks total damages of over

1 \$110 million for other injuries not alleged in the complaint, including reputational harm and
2 business losses. In the motion, Plaintiff asserts that Defendants have defrauded a host of
3 other victims by similarly failing to repay their investments. Plaintiff further asserts that,
4 after filing the instant action, he sought the help of Pakistan’s Federal Investigation Agency
5 (“FIA”) to investigate the purportedly criminal and civil wrongs of Defendants. Amjad, in
6 turn, filed a civil suit against Plaintiff, as well as various FIA officials in Pakistan. In
7 support of the default judgment motion, Plaintiff also filed a Brief on Jurisdictional Issues
8 (“JX Brief”). Dkt. 44.

9 In the meantime, on March 30, 2017, Plaintiff initiated a new action against
10 Defendants, as well as the “Government of Pakistan through its Ministries,” several named
11 ministries, and one FIA official (collectively the “Pakistan Defendants”). Khokhar v.
12 Government of Pakistan through Its Ministries, Case No. 17-CV-01769. The two actions
13 were deemed related. Dkt. 39. On June 12, 2017, counsel appeared on behalf of the
14 Pakistan Defendants in the latter filed action and declined to consent to the jurisdiction of a
15 magistrate judge. As a result, both actions were reassigned to this Court. Dkt. 47.²
16 Thereafter, Plaintiff filed two motions urging the Court to enter default judgment in this
17 action on the theory that Magistrate Judge Beeler was prepared to do so prior to the
18 reassignment. Dkt. 49, 51. The Court denied the motions. Dkt. 53.

19 On August 16, 2017, the Court issued an Order to Show Cause (“OSC”), directing
20 Plaintiff to show cause in writing why the action should not be dismissed for lack of
21 personal jurisdiction and/or on the ground of *forum non conveniens*. Dkt. 52. After
22 receiving a brief extension, Plaintiff filed a Response to Show Cause Notice (“Response”),
23 along with supporting exhibits and declarations. Dkt. 57.

24 **II. LEGAL STANDARDS**

25 The clerk may enter default against a party who fails to plead or otherwise defend an
26 action. Fed. R. Civ. P. 55(a). After entry of default, a district court may enter a default

27 ² Khokhar v. Government of Pakistan through Its Ministries was subsequently
28 dismissed on October 10, 2017. See Case No. 17-CV-01769, Dkt. 64.

1 judgment. Id. 55(b). The decision whether to grant or deny a default judgment lies within
2 the sound discretion of the court. Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980).
3 Factors a district court may consider in exercising its judgment include: (1) the possibility
4 of prejudice to the plaintiff; (2) the merits of the plaintiff’s substantive claim; (3) the
5 sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility
6 of a dispute concerning the material facts; (6) whether the default was due to excusable
7 neglect; and (7) the policy favoring decisions on the merits. Eitel v. McCool, 782 F.2d
8 1470, 1472-73 (9th Cir. 1986).

9 Upon entry of default, well-pleaded factual allegations of the complaint, except
10 those relating to the amount of damages, are taken as true. See Fed. R. Civ. P. 8(b)(6) (“An
11 allegation—other than one relating to the amount of damages—is admitted if a responsive
12 pleading is required and the allegation is not denied.”); see also Geddes v. United Fin. Grp.,
13 559 F.2d 557, 560 (9th Cir. 1977)). “A defendant is not held to admit facts that are not
14 well-pleaded or to admit conclusions of law,” however. DIRECTV, Inc. v. Hoa Huynh,
15 503 F.3d 847, 854 (9th Cir. 2007) (quotation omitted); see also Danning v. Lavine, 572
16 F.2d 1386, 1388 (9th Cir. 1978) (“[F]acts which are not established by the pleadings of the
17 prevailing party, or claims which are not well-pleaded, are not binding and cannot support
18 the judgment.”). Additionally, a plaintiff must provide proof regarding the extent of any
19 damages. See Fed. R. Civ. P. 8(b)(6); see also Geddes, 559 F.2d at 560.

20 **III. DISCUSSION**

21 The Court issued an OSC directing Plaintiff to show cause why the action should not
22 be dismissed for lack of personal jurisdiction and/or under the doctrine of *forum non*
23 *conveniens*. In his Response, Plaintiff acknowledges certain “weaknesses” with regard to
24 the issues raised in the OSC, but urges the court to set aside these “technicalities” in favor
25 of achieving justice. Response at 15-16. Plaintiff asserts that the Court enjoys personal
26 jurisdiction over the Defendants, and further asserts that the United States is the only
27 suitable forum for this action. For the reasons set forth below, the Court disagrees.
28

1 **A. JURISDICTION**

2 “When entry of judgment is sought against a party who has failed to plead or
3 otherwise defend, a district court has an affirmative duty to look into its jurisdiction over
4 both the subject matter and the parties.” In re Tuli, 172 F.3d 707, 712 (9th Cir. 1999). “A
5 judgment entered without personal jurisdiction over the parties is void.” Id. Thus, to avoid
6 entry of a void judgment, a district court may dismiss an action *sua sponte* for lack of
7 personal jurisdiction. Id.; e.g., DFSB Kollektive Co. v. Bourne, 897 F. Supp. 2d 871, 877
8 (N.D. Cal. 2012) (denying motion for default judgment for lack of personal jurisdiction);
9 Facebook, Inc. v. Pedersen, 868 F. Supp. 2d 953 (N.D. Cal. 2012) (same). In the OSC, the
10 Court tentatively found personal jurisdiction lacking as to all Defendants except Amjad and
11 Khawar. Having considered Plaintiff’s Response, the Court now affirms that finding.

12 **1. Consent to Jurisdiction**

13 The only basis for personal jurisdiction alleged in the Complaint is consent. Compl.
14 ¶ 1(c) (“The Defendants have agreed to have the lawsuit heard in Courts of all fifty States
15 of America of which California is part.”) In support of that allegation, Plaintiff avers that
16 Defendants agreed to the jurisdiction of the courts of the United States in both the First
17 Agreement and the Final Agreement. JX Brief ¶¶ 2, 5. Specifically, Plaintiff refers to the
18 portion of the First Agreement that provides: “The Agreement is adjudicated under the laws
19 of the Government of Pakistan. In the event if [*sic*] no justice is provided and received,
20 laws of Dubai or Malaysia or USA may apply.” First Agreement at 2. He also refers to the
21 portion of the Final Agreement that provides: “[Plaintiff] can take legal action against
22 me . . . in any courts in Pakistan, Malaysia or USA.” Final Agreement ¶ 8. Plaintiff asserts
23 that the Final Agreement is binding on Defendants, but acknowledges that it is signed by
24 only two of the named defendants—Amjad and Khawar. Id. ¶ 5; see also Compl. ¶ 50.

25 With respect to the First Agreement, Plaintiff confuses “choice of law” and “choice
26 of forum” or “forum selection” clauses. See 77 Am. Jur. 2d Venue § 10. A forum selection
27 clause designates the state or court where litigation may be brought, while a choice-of-law
28 clause identifies the substantive law that will be applied. Id.; 17A Am. Jur. 2d Contracts

1 §§ 253 (defining forum selection clause) & 255 (defining choice of law clause). Even
2 assuming that the choice of law clause set forth in the First Agreement—which provides for
3 application of the law of Pakistan, *or, if justice is not attained*, the law of Dubai *or*
4 Malaysia *or* the United States—is contractually enforceable so as to invoke application of
5 the laws of the United States (a proposition this Court finds doubtful), the clause merely
6 identifies the law that will govern the contract, not the forum in which suit may be brought.
7 Consequently, consent to jurisdiction does not arise out of the First Agreement.

8 Unlike the clause at issue in the First Agreement, the clause at issue in the Final
9 Agreement constitutes a forum selection clause. Generally, acceptance of a forum selection
10 clause evidences consent to personal jurisdiction in the specified forum(s). S.E.C. v. Ross,
11 504 F.3d 1130, 1149 (9th Cir. 2007).³ “The fundamental element lacking here,” however,
12 “is any evidence that [certain named defendants] agreed to the clause.” Holland Am. Line
13 Inc. v. Wartsila N. Am., Inc., 485 F.3d 450, 458 (9th Cir. 2007) (concluding that personal
14 jurisdiction was lacking over entities that did not agree to be bound by a forum selection
15 clause). The Final Agreement has signatory lines for “Mr. Amjad Yusuf” and “Mrs. Amjad
16 Yusuf (Zarina),” but is signed only by Amjad. Compl. ¶ 50. Zarina declined to sign the
17 Final Agreement. Id. ¶ 52. The Final Agreement also has a section designated “Other
18 Family members,” under which Khawar allegedly signed. Id. ¶ 50. None of the other
19 named defendants are parties to the Final Agreement, and Plaintiff fails to allege any other
20 basis for binding them to the forum selection clause contained therein. Accordingly,
21 personal jurisdiction by consent is lacking as to all Defendants except Amjad and Khawar.

22 Plaintiff admits that he confused “choice of law” and “choice of forum” clauses.
23 Response at 15. According to Plaintiff, “he understood laws of the land are also the forum
24 of the lawsuit.” Id. “To him, when the Defendants agreed and consented for the matter to
25 be heard in USA courts, he also understood that it applies to both, the law and the forum.”
26

27 ³ A forum selection clause is *prima facie* valid, and is enforceable absent a strong
28 showing that it should be set aside. Manetti-Farrow, Inc. v. Gucci Am., Inc., 858 F.2d 509,
514 (9th Cir. 1988) (citing M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 15 (1972)).

1 Id. Plaintiff asserts that Defendants had the same understanding, but offers no evidence in
2 support of this assertion. Id. at 16 (“They also understood courts of USA under USA laws
3 and nothing more or nothing less.”). Stating that “[t]his debate is technical and more
4 applicable to lawyers,” Plaintiff pleads with the Court “not to apply these stringent
5 technicalities and [instead] look at how and where justice may be served to a victim and his
6 family.” Id. Plaintiff’s explanation fails to establish personal jurisdiction, however.

7 First, personal jurisdiction is not a mere technicality, but a prerequisite to a valid
8 judgment. In re Tuli, 172 F.3d at 712 (“A judgment entered without personal jurisdiction
9 over the parties is void.”). Further, while personal jurisdiction ordinarily may be waived,
10 the Court’s duty to establish jurisdiction over the parties is of heightened importance in this
11 action, given that a judgment rendered without it will be unenforceable in Pakistan. See 2
12 Enforcement of Money Judgments (Lawrence W. Newman ed., 2017), at PAK-8 (to
13 enforce a foreign judgment in Pakistan it is essential that the foreign court had jurisdiction
14 over the defendant) (citing Pakistan Code of Civil Procedure, 1908, (“CPC”) § 13 (foreign
15 judgments are not enforceable unless “pronounced by a Court of competent jurisdiction”)).

16 Second, Plaintiff’s conclusory assertion regarding the parties’ purported
17 misunderstanding of the choice of law and forum selection clauses is wholly insufficient to
18 counter the plain language of the agreements.⁴ Generally, “a written instrument is
19 presumed to express the true intent of the parties.” 20th Century Ins. Co. v. Liberty Mut.
20 Ins. Co., 965 F.2d 747, 759, n.12 (9th Cir. 1992) (citing In re Beverly Hills Bancorp., 649
21 F.2d 1329, 1333 (9th Cir. 1981)). “Reformation or revision on the ground of mutual
22 mistake . . . requires clear and convincing evidence of the alleged mistake,” and the burden
23 is on the party seeking reformation to present such evidence. Id. Plaintiff offers no such
24 evidence, only a bare assertion. The plain language of the agreement therefore governs.

25
26 ⁴ Forum selection and choice of law clauses are interpreted according to federal law.
27 Doe 1 v. AOL LLC, 552 F.3d 1077, 1081 (9th Cir. 2009). When interpreting a contract
28 under federal law, courts “look for guidance ‘to general principles for interpreting
contracts.’” Id. (quoting Klamath Water Users Protective Ass’n v. Patterson, 204 F.3d
1206, 1210 (9th Cir. 1999)).

1 **2. Alternative Bases for Jurisdiction**

2 For the first time in response to the OSC, Plaintiff also argues that personal
3 jurisdiction may be established by other means, including Defendants’ contacts with
4 Plaintiff in the forum, Plaintiff’s economic losses in the forum, Defendants’ involvement in
5 money laundering, and Defendants’ participation in the events giving rise to Plaintiff’s
6 injury. Plaintiff fails to establish personal jurisdiction on any of these alternative bases,
7 which the Court addresses in turn.

8 **a. Contact with the Forum**

9 Plaintiff acknowledges that “Defendants live in Pakistan and much of the action took
10 place in Pakistan.” Response at 16. Nonetheless, Plaintiff argues that Defendants have had
11 sufficient contacts with him in the forum to establish personal jurisdiction. Id. First,
12 Plaintiff asserts that Amjad visited California on three occasions—in 2007, 2010, and 2011.
13 Response at 16. According to Plaintiff, Amjad attempted to solicit an investment during
14 the 2007 visit. Id. Second, Plaintiff asserts that Amjad had “enough contacts with the
15 Plaintiff via numerous telephone calls and messages.” Id. For example, Plaintiff “received
16 emails of profit [statements] from [Amjad] while in California.” Id. Third, Plaintiff asserts
17 that Zamzam Builders “have a webpage to sell units in the Marhaba Trade Center being
18 built on the land bought with Plaintiff’s money.” Id. at 17. Plaintiff states that “[t]here are
19 no restrictions if a USA buyer wants to buy a unit or the entire building.” Id.

20 “Due process requires that the defendant ‘have certain minimum contacts’ with the
21 forum state ‘such that the maintenance of the suit does not offend traditional notions of fair
22 play and substantial justice.’” Picot v. Weston, 780 F.3d 1206, 1211 (9th Cir. 2015)
23 (quoting Int’l Shoe Co. v. Wash., 326 U.S. 310, 316 (1945) (internal quotation omitted)).⁵
24 “Depending on the strength of those contacts, there are two forms that personal jurisdiction
25

26 ⁵ “‘Federal courts ordinarily follow state law in determining the bounds of the
27 jurisdiction over persons.’ Because ‘California’s long-arm statute allows the exercise of
28 personal jurisdiction to the full extent permissible under the U.S. Constitution,’ our inquiry
centers on whether exercising jurisdiction comports with due process.” Picot, 780 F.3d at
1211 (quoting Daimler AG v. Bauman, 134 S. Ct. 746, 753 (2014)).

1 may take: general and specific.” Id. General jurisdiction will lie as to all claims against a
2 nonresident defendant whose contacts with the forum are “substantial, continuous, and
3 systematic.” Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co., 284 F.3d
4 1114, 1123 (9th Cir. 2002). Alternatively, specific jurisdiction may lie as to a claim that
5 “arises out of or has a substantial connection to a defendant’s contacts with the forum.” Id.

6 Here, Defendants’ alleged contacts with the forum are plainly insufficient to
7 establish general jurisdiction. To establish general jurisdiction, nonresident defendants
8 must engage in continuous and systematic business contacts that “render them essentially at
9 home” or “approximate physical presence” in the forum state. Goodyear Dunlop Tires
10 Operation, S.A. v. Brown, 564 U.S. 915, 919 (2011); Schwarzenegger v. Fred Martin
11 Motor Co., 374 F.3d 797, 801 (9th Cir. 2004) (quotation omitted). A handful of visits and
12 telephone calls, even for the purpose of soliciting an investment from a forum resident,
13 hardly approximate physical presence. See Bancroft & Masters, Inc. v. Augusta Nat’l, Inc.,
14 223 F.3d 1082, 1086 (9th Cir. 2000) (“engaging in commerce with residents of the forum
15 state is not in and of itself the kind of activity that approximates physical presence within
16 the state’s borders”) (citing Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S.
17 408, 418 (1984)); Gates Learjet Corp. v. Jensen, 743 F.2d 1325, 1331 (9th Cir. 1984)
18 (holding that the solicitation of business in the forum, several visits and purchases therein,
19 as well as numerous telephone calls, telexes, and letters did not confer general jurisdiction).
20 Likewise, the operation of a commercial and/or interactive website accessible to forum
21 residents fails to confer general jurisdiction. Mavrix Photo, Inc. v. Brand Techs., Inc., 647
22 F.3d 1218, 1226-27 (9th Cir. 2011). General jurisdiction is therefore lacking.

23 The alleged contacts are also insufficient to establish specific jurisdiction. To
24 establish specific jurisdiction: (1) the defendant must purposefully direct his activities or
25 consummate some transaction with the forum or resident thereof, or perform some act by
26 which he purposefully avails himself of the privilege of conducting activities in the forum,
27 thereby invoking the benefits and protections of its laws; (2) the claim must be one which
28 arises out of or relates to the defendant’s forum-related activities; and (3) the exercise of

jurisdiction must comport with fair play and substantial justice, i.e., it must be reasonable. Boschetto v. Hansing, 539 F.3d 1011, 1016 (9th Cir. 2008). As a threshold matter, the operation of a website to market the Marhaba Trade Center fails to confer specific jurisdiction because Plaintiff's claims do not arise out of or relate thereto. As for the visits, telephone calls, and emails, the Court notes that such contacts, if for the purpose of soliciting or negotiating the investments at issue, could give rise to specific jurisdiction.⁶ Aside from the assertion that Amjad sought an investment during his 2007 trip to California, however, there is no evidence that these encounters or communications actually gave rise to Plaintiff's investment in 2008. In any event, these contacts involve Amjad, over whom jurisdiction by consent already has been established. In determining the existence of personal jurisdiction, "[e]ach defendant's contacts with the forum State must be assessed individually." Calder v. Jones, 465 U.S. 783, 790 (1984). The alleged contacts thus fail to establish personal jurisdiction over any of other named defendants.

b. Economic Loss in the Forum

Plaintiff next argues that his economic losses had repercussions in the United States. Response at 17. He asserts that "damage done by Defendants in Pakistan hurt a USA citizen who is a productive member of the US business community." Id. Specifically, due to financial losses, he had to "shut down his offices in Silicon Valley." Id. Absent other minimum contacts, however, "mere injury to a forum resident is not a sufficient connection to the forum." Walden v. Fiore, 134 S. Ct. 1115, 1125 (2014) (citing Calder, 465 U.S. at 788-89). "Regardless of where a plaintiff lives or works, an injury is jurisdictionally relevant only insofar as it shows that the defendant has formed a contact with the forum

⁶ A foreign defendant's contract with a forum resident does not alone establish personal jurisdiction. Boschetto, 539 F.3d at 1017 (citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 478-79 (1985)). Rather, "prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing" must be evaluated to determine whether the defendant established minimum contacts. Burger King, 471 U.S. at 478-79. Business transactions that result from direct solicitations or negotiations in the forum state likely give rise to personal jurisdiction, particularly where the transactions create continuing relationships and obligations within the forum. Resnick v. Rowe, 283 F. Supp. 2d 1128, 1139 (D. Haw. 2003) (citing Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 840 (9th Cir. 1986)).

1 State.” Id. Here, “the effects of [Defendants’] conduct on [Plaintiff] are not connected to
2 [California] in a way that makes those effects a proper basis for jurisdiction.” Id.

3 **c. Money Laundering**

4 Plaintiff further asserts that “Defendants are cash smugglers involved in money
5 laundering,” and that “some of these funds support drug dealers and terrorist
6 organizations.” Response at 18. According to Plaintiff, courts in the United States enjoy
7 personal jurisdiction over anyone involved in such activities. Id. at 19. Again, Plaintiff
8 fails to establish a basis for personal jurisdiction. Plaintiff offers no evidence that
9 Defendants are involved in money laundering and no authority demonstrating that such
10 activities necessarily give rise to personal jurisdiction in a civil action between private
11 parties. Moreover, even if these assertions were supported, Defendants’ purported money
12 laundering activities are wholly unrelated to the instant breach of contract action, and thus,
13 irrelevant to the jurisdictional analysis. See Goodyear, 564 U.S. at 919 (“In contrast to
14 general, all-purpose jurisdiction, specific jurisdiction is confined to adjudication of ‘issues
15 deriving from, or connected with, the very controversy that establishes jurisdiction.’”).

16 **d. Involvement in the Wrongful Course of Conduct**

17 Having failed to establish any other basis for personal jurisdiction, Plaintiff argues
18 that each named defendant is “involved in one way or the other” in the dispute giving rise
19 to this action. Response at 21. For example, Plaintiff notes that Zarina signed at least one
20 of the agreements between the parties, and asserts that her failure to sign the Final
21 Agreement “does not mean she is absolved of her responsibility, or that the [agreement she
22 signed] was cancelled[.]” Id. at 20. This argument demonstrates a fundamental
23 misunderstanding of personal jurisdiction. The question before the Court is not whether
24 Zarina (or any other named defendant) is liable for the alleged misconduct, but rather,
25 whether she is subject to suit for that conduct in this Court. As discussed above, with the
26 exception of Amjad and Khawar, the named defendants are not subject to suit in this Court.
27 Thus, the Court does not reach the issue of their underlying liability.

1 **e. Jurisdiction for Purposes of Enforcement**

2 Finally, even if the Court were to find that it has personal jurisdiction over
3 Defendants on the alternative grounds asserted by Plaintiff, such a finding would be
4 insufficient to ensure enforcement of the Court’s judgment in Pakistan. As discussed
5 further in the context of the *forum non conveniens* analysis, a judgment by this Court is not
6 directly enforceable in Pakistan; rather, enforcement requires the filing of a separate suit in
7 Pakistan under section 13 of the CPC. Pursuant to CPC section 13, a foreign judgment is
8 not enforceable unless “pronounced by a Court of competent jurisdiction.” 2 Enforcement
9 of Money Judgments, at PAK-8. For purposes of section 13, personal jurisdiction must be
10 determined “not by the territorial law of the foreign State but by the rules of private
11 International law.” *Id.* at PAK-15 (quoting Fazal Ahmed v. Abdul Bari, PLD 1952 Dacca
12 155). Jurisdiction by consent is sufficient to satisfy the requirement of CPC section 13, *id.*
13 at PAK-15; jurisdiction based on minimum contacts, is not, *id.* at PAK-16 & 17.

14 **3. Conclusion**

15 Accordingly, except as to Amjad and Khawar, the Court finds that personal
16 jurisdiction is lacking.

17 **B. FORUM NON CONVENIENS**

18 The *forum non conveniens* doctrine enables a district court to decline to exercise
19 jurisdiction if “the litigation can be more appropriately conducted in a foreign tribunal.”
20 Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 504 (1947). A court “may dispose of an action by a
21 *forum non conveniens* dismissal, bypassing questions of subject-matter and personal
22 jurisdiction, when considerations of convenience, fairness, and judicial economy so
23 warrant.” Sinochem Int’l Co. v. Malaysia Int’l Shipping Corp., 549 U.S. 422, 432 (2007).
24 A court may issue such a dismissal *sua sponte*, so long as the parties are given notice and
25 an opportunity to respond. Costlow v. Weeks, 790 F.2d 1486, 1488 (9th Cir. 1986).

26 A *forum non conveniens* dismissal is appropriate if an adequate alternative forum
27 exists and the balance of private and public interest factors favor dismissal. Ayco Farms,
28 Inc. v. Ochoa, 862 F.3d 945, 948 (9th Cir. 2017). The private interest factors are: (1) the

1 residence of the parties and the witnesses; (2) the forum’s convenience to the litigants; (3)
2 access to physical evidence and other sources of proof; (4) whether unwilling witnesses can
3 be compelled to testify; (5) the cost of bringing witnesses to trial; (6) the enforceability of
4 the judgment; and (7) all other practical problems that make trial of a case easy, expeditious
5 and inexpensive. Id. at 950. The public interest factors are: (1) the local interest of the
6 lawsuit; (2) the court’s familiarity with governing law; (3) the burden on local courts and
7 juries; (4) the amount of congestion in the court; and (5) the costs of resolving a dispute
8 unrelated to the forum. Id.

9 **1. Forum Selection Clause**

10 In the absence of a forum selection clause, a plaintiff’s choice of forum is generally
11 afforded deference, especially if the plaintiff is a United States citizen or resident. Ayco
12 Farms, 862 F.3d at 949-50; Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255-56 (1981)
13 (noting that when a plaintiff selects his or her home forum, it is reasonable to assume that
14 the forum is convenient). That deference is “far from absolute,” however. Ayco Farms,
15 862 F.3d at 950 (quotations and citations omitted) (noting that the mere presence of an
16 American plaintiff is not alone sufficient to bar a *forum non conveniens* dismissal).
17 Further, when the Plaintiff does not reside in the chosen forum, his or her choice of forum
18 is entitled to less deference. Id. at 950; see also Ranza v. Nike, Inc., 792 F.3d 1059, 1076-
19 77 (9th Cir. 2015) (affording less deference to the choice of forum of a United States
20 citizen residing permanently abroad).

21 When the parties execute a forum selection clause, the preselected forum is afforded
22 deference. Atl. Marine Constr. Co. v. U.S. Dist. Ct., 134 S. Ct. 568, 581-82 (2013)
23 (holding that a plaintiff’s choice of an alternate forum “merits no weight”). Additionally, in
24 conducting the *forum non conveniens* analysis, the private interest factors merit no
25 consideration. Id. at 582. “When parties agree to a forum-selection clause, they waive the
26 right to challenge the preselected forum as inconvenient or less convenient A court
27 accordingly must deem the private-interest factors to weigh entirely in favor of the
28 preselected forum.” Id. “[W]hatever ‘inconvenience’ [the parties] would suffer by being

1 forced to litigate in the contractual forum as [they] agreed to do was clearly foreseeable at
2 the time of contracting.” Id. (quoting Bremen, 407 U.S. at 17-18).

3 The instant case presents a somewhat unusual situation. Unlike a typical forum
4 selection clause that designates a specific forum, the clause at issue here permits, but does
5 not require, suit to be brought in any of the courts of Pakistan, Malaysia, or the United
6 States.⁷ By filing suit in the United States, Plaintiff has selected one of the designated
7 forums. However, the alternative forum under consideration—Pakistan—is also a
8 designated forum. Dismissal in favor of a Pakistani forum therefore would not contravene
9 the forum selection clause. In view of the foregoing, the Court affords deference to the
10 forums designated in the forum selection clause. Given that the forum selection clause is
11 not definitive, Plaintiff’s choice among the designated forums is also due some deference;
12 because Plaintiff has agreed to litigate in any of the designated forums, however, that
13 deference is less than would ordinarily be afforded absent a forum selection clause. For the
14 same reason, the Court gives less weight to the private interest factors that implicate the
15 parties’ inconveniences in litigating in the designated forums. Whatever inconveniences
16 the parties would suffer by litigating in the designated forums was clearly foreseeable at the
17 time of contracting.

18 2. Alternative Forum

19 At the outset of any *forum non conveniens* inquiry, the court must determine whether
20 an adequate alternative forum is available to the plaintiff. Lueck v. Sundstrand Corp., 236
21 F.3d 1137, 1143 (9th Cir. 2001). As a threshold matter, this requires that the defendant be
22 amenable to service of process in the foreign forum. Id. (citing Piper Aircraft, 454 U.S. at
23 254 n.22). Here, it appears that the named defendants are amenable to service in Pakistan.

24 ⁷ Forum selection clauses take two forms: mandatory and permissive. See 77 Am.
25 Jur. 2d Venue § 10. “There is a vast difference between the two.” Hsu v. OX Optics Ltd.,
26 211 F.R.D. 615, 618 (N.D. Cal. 2002). A forum selection clause is mandatory if it
27 designates a forum as “exclusive.” N. Cal. Dist. Counsel of Laborers v. Pittsburg-Des
28 Moines Steel Co., 69 F.3d 1034, 1037 (9th Cir. 1995). On the other hand, a permissive
forum selection clause merely provides the parties’ consent to jurisdiction in a particular
forum, but does not preclude litigation in another forum. Hunt Wesson Foods, Inc. v.
Supreme Oil Co., 817 F.2d 75, 77 (9th Cir. 1987).

1 At a minimum, Amjad and Khawar are amenable to service in Pakistan, both because they
2 are residents of the country and consented to the jurisdiction of its courts.

3 An alternative forum will be found adequate if it provides the plaintiff “some
4 remedy for his wrong.” Id. In “rare circumstances,” however, “if the remedy provided by
5 the alternative forum is so clearly inadequate or unsatisfactory that it is no remedy at all,”
6 the foreign forum may be deemed lacking. Piper Aircraft, 454 U.S. at 254 & n.22 (holding
7 that a forum is not inadequate merely because its laws are less favorable or offer a lesser
8 remedy to the plaintiff); Lueck, 236 F.3d at 1143 (“The effect of Piper Aircraft is that a
9 foreign forum will be deemed adequate unless it offers no practical remedy for the
10 plaintiff’s complained of wrong.”).

11 Plaintiff claims that Pakistan is an inadequate forum because its courts are too
12 plagued by corruption and delay to provide justice.⁸ Plaintiff asserts that the only way to
13 prevail in litigation in Pakistan is to “hire lawyers who have ‘good relationships with the
14 judges’ and pay gifts (*bribes*).” Response at 2. He further asserts that the judiciary in
15 Pakistan is severely backlogged, with cases commonly “pending for 10, 15, 20 and even
16 more than 25 years.” Id. at 4.

17 To demonstrate that a foreign nation is an inadequate forum due to corruption or
18 delay, “a party must make a ‘powerful showing’ that includes specific evidence.” Carijano
19 v. Occidental Petroleum Corp., 643 F.3d 1216, 1226 (9th Cir. 2011) (quoting Tuazon v.
20 R.J. Reynolds Tobacco Co., 433 F.3d 1163, 1179 (9th Cir. 2006)). Generalized and
21 anecdotal evidence of corruption and delay is insufficient to support a finding of a forum’s
22 inadequacy. Tuazon, 433 F.3d at 1179 (reversing the district court’s finding that the
23

24 ⁸ Plaintiff also discusses the inadequacy of several other institutions in Pakistan,
25 including the police, the FIA, and the Ministry of Overseas Pakistanis and Human
26 Resources Development, asserting that none of these entities will aid him in his pursuit of
27 justice against Defendants. The competence of these institutions is not directly relevant to
28 the Court’s inquiry, however. The matter before the Court is a civil action for breach of
contract, and the pertinent question is whether Pakistan provides an adequate alternative
forum for Plaintiff to litigate this claim. The fact that the authorities undertaking a criminal
investigation into Amjad (and other named defendants) are ineffective, or that certain
government ministries are unable or unwilling to provide assistance to Plaintiff in a civil or
criminal proceeding, is immaterial.

1 Philippines was an inadequate forum); Carijano, 643 F.3d at 1226-27 (affirming the district
2 court’s finding that the plaintiff’s expert affidavits were “too generalized and anecdotal ‘to
3 pass value judgments on the adequacy of Peru’s judicial system’”).

4 In support of his claim regarding Pakistan’s judicial system, Plaintiff relies on his
5 own conclusory assertions, a few Pakistani newspaper articles, and the declarations of three
6 Pakistani attorneys. This evidence is insufficient to meet the requisite “powerful showing”
7 standard. Plaintiff’s own assertions are conclusory and anecdotal. Likewise, the
8 newspaper articles are generalized and often immaterial. For example, Plaintiff refers to an
9 article concerning delays in Pakistan’s criminal justice system, Dkt. 32-4 at 14-15, while
10 this case is civil in nature. See Tuazon, 433 F.3d at 1179 (noting that reports regarding
11 human rights and criminal justice in the foreign forum were of little value in evaluating the
12 judiciary’s ability to render justice in a civil proceeding).⁹

13 The attorney declarations fare no better. As a threshold matter, the declarations fail
14 to satisfy the statutory requirement that a witness certify the truth of an unsworn statement
15 by stating that it is “under penalty of perjury under the laws of the United States of
16 America.”¹⁰ Setting that aside, the declarations offer no specific evidence of corruption and
17 delay. One of the declarants simply provides an overview of the process to enforce foreign
18 judgments in Pakistan, with no opinion regarding the adequacies of Pakistan’s judicial
19 system. Dkt. 58-2. Although the other two declarants speak to purported delays and
20 corruption, they offer only generalized statements. E.g., Dkt. 58-1 (“Delays and bribes are
21 common in Pakistani courts and so is the influence by politicians, clans, and members of

22
23 ⁹ Notably, Plaintiff sought the assistance of the Ministry of Overseas Pakistanis and
24 Human Resource Development in connection with this controversy. Plaintiff provides a
25 letter from the Grievance Commissioner for Overseas Pakistanis, wherein the
Commissioner describes an effort to designate special judges to hear cases of overseas
Pakistanis in limited time (i.e., 6 months). Dkt. 59-1. Pakistan thus appears to have an
interest in expediting civil cases like Plaintiff’s.

26 ¹⁰ To establish a matter by an unsworn declaration executed outside the United
27 States, the declaration must be subscribed by the declarant as true under penalty of perjury,
28 and dated, in substantially the following form: “I declare (or certify, verify, or state) under
penalty of perjury under the laws of the United States of America that the foregoing is true
and correct. Executed on (date). (Signature).” 28 U.S.C. § 1746.

1 bar council.”); Dkt. 59-2 (“Only people with influence and money who can ‘buy justice’ go
2 to courts to prevent any legal actions against them.”). Additionally, the Court notes that the
3 declarations are not given by impartial experts, but by counsel who represent Plaintiff in
4 Pakistan in connection with this controversy.

5 In view of the foregoing, the Court finds that Plaintiff fails to adduce specific
6 evidence sufficient to make the “powerful showing” necessary to support a finding that
7 Pakistan is an inadequate legal forum.

8 **3. Private Interest Factors**

9 Turning to the balancing of the private and public interest factors, the Court finds
10 that the private interest factors support dismissal in favor of a Pakistani forum.

11 Although Plaintiff is a resident of California, he also maintains a residence in, and
12 frequently travels to, Pakistan. Defendants—who have not appeared in this action—reside
13 in Pakistan. As discussed above, the parties to the Final Agreement consented to the
14 jurisdiction of the courts of both the United States and Pakistan. Plaintiff, Amjad, and
15 Khawar thus contemplated and accepted the inconveniences associated with litigating in
16 either the United States or Pakistan. For the Defendants who are not parties to the Final
17 Agreement, however, the Court notes that Pakistan is plainly a more convenient forum
18 relative to the United States.

19 Regarding witnesses and physical evidence, the events in question took place almost
20 exclusively in Pakistan, and the Court expects all material witnesses and evidence to be
21 located in that country. Notably, this action largely depends on written agreements, which
22 have been filed in this Court. Insofar as the action raises a dispute over the transfer of
23 physical property in partial satisfaction of Defendants’ debts, however, deeds and other
24 records regarding the ownership of that property are located in Pakistan. Furthermore,
25 while Plaintiff relies solely on the parties’ written agreements, the Court notes (and
26 discusses in further detail, below) that resolution of this action solely by reference to the
27 written agreements is not a simple proposition. To the extent that additional proceedings
28 are required, the Court would be unable to compel testimony or discovery because Pakistan

1 is not a signatory to the Hague Convention. Additionally, while Plaintiff may rely on well-
2 pleaded allegations to establish liability, damages must be proven by competent evidence.

3 Furthermore, any judgment issued by this Court is not directly enforceable in
4 Pakistan. Pursuant to CPC section 44-A, a foreign judgment may be executed in Pakistan
5 only if the country from which the judgment was obtained is a reciprocating territory.
6 2 Enforcement of Money Judgments, at PAK-4. Pakistan does not have a reciprocating
7 agreement with the United States. Id. at PAK-3. Consequently, if a judgment were to issue
8 from this Court, Plaintiff would be required to file a new suit in Pakistan with the foreign
9 judgment as a cause of action. Id. at PAK-8. Under CPC section 13, a foreign judgment
10 may be deemed unenforceable: (a) where it has not been pronounced by a Court of
11 competent jurisdiction; (b) where it has not been given on the merits of the case; (c) where
12 it appears on the face of the proceedings to be founded on an incorrect view of International
13 Law or a refusal to recognize the law of Pakistan in cases in which such law is applicable;
14 (d) where the proceedings in which the judgment was obtained are opposed to natural
15 justice; (e) where it has been obtained by fraud; [or] (f) where it sustains a claim founded
16 on a breach of any law in force in Pakistan. Id. (quoting CPC section 13). Thus,
17 enforcement of a judgment rendered by this Court is far from simple or certain.¹¹ On the
18 other hand, a judgment rendered in Pakistani would require no foreign enforcement.

19 Finally, as for other practical problems that complicate the litigation, the Court notes
20 that personal jurisdiction is lacking as to most of the named defendants. Consequently, any
21 relief granted by this Court would be against Amjad and Khawar only, and enforceable
22 against only their assets. In contrast, it appears that a Pakistani court would have
23 jurisdiction over most, if not all, of the named defendants, thereby allowing for a more
24 complete resolution of the action.

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26
27 ¹¹ Indeed, Plaintiff requests that the Court “write a letter to the Interior Minister of
28 Pakistan . . . to help implement any judgment that is granted against these Defendants.”
Dkt. 32-1 at 4. Enforcement in Pakistan is beyond the Court’s purview, however, and
sovereignty principles prevent interference with Pakistan’s judicial process.

1 **4. Public Interest Factors**

2 The public interest factors also strongly support dismissal.

3 As a threshold matter, the Court notes that Defendants have not appeared in this
4 action, and thus, the dispute likely will not proceed to trial. Indeed, Plaintiff asks this Court
5 to conclude the action by entering default judgment. Therefore, the burdens and costs
6 associated with resolving this action presumably would be less. Having preliminarily
7 reviewed the action on the merits, however, the Court finds that resolution of the motion for
8 default judgment is not straightforward, and, in fact, entry of default judgment is doubtful.

9 In brief, Plaintiff seeks to recover over \$30 million in damages for breach of an
10 investment agreement. The contractual terms regarding the expected return on investment
11 are impossibly vague, however. The First Agreement, which is only two pages in length,
12 contemplates the intermittent payment of “profit,” but the intervals of such payments, as
13 well as the particular investment vehicles from which profit is to be derived, are left
14 unspecified. Even the amount of profit is indefinite, with potential figures ranging from
15 20% to 40% (of what, it cannot be determined). Likewise, “accrued profits and penalties”
16 due under the Final Agreement are unspecified. Consequently, even assuming that the
17 agreements remain enforceable despite these material ambiguities, Plaintiff would be
18 unlikely to recover any sum beyond the loan principal. The Court would expend
19 considerable effort and expense to resolve these issues.

20 At the same time, this forum has only a minimal interest in adjudicating an action for
21 breach of a contract that was executed in Pakistan regarding investments in Pakistan. The
22 action’s only connection to this forum is through Plaintiff’s status as a resident of
23 California. On the other hand, Pakistan has a strong interest in ensuring that investors are
24 secure in their investments within the country. Indeed, an FIA investigation was opened to
25 investigate the conduct at issue in this action. Further, given the circumstances surrounding
26 the formation of the contract, as well as its terms, resolution of the underlying contractual
27 dispute will be governed by the laws of Pakistan, with which this Court is unfamiliar. See
28 Atl. Marine Constr., 134 S. Ct. at 582 (a federal court sitting in diversity follows the

1 choice-of-law rules of the State in which it sits); Nedlloyd Lines B.V. v. Superior Court, 3
2 Cal. 4th 459, 466 (1992) (reviewing California’s choice-of-law rules). Application of the
3 laws of Pakistan may be of particular significance in this action, given that the agreements
4 are unconventional and potentially unenforceable under the general contractual principles
5 applied in the United States.

6 **5. Conclusion**

7 The Court does not minimize the financial losses allegedly suffered by Plaintiff, nor
8 discount his reasons for filing suit in the United States. In view of the foregoing, however,
9 the Court finds that Pakistan is the more appropriate forum, and thus, that dismissal under
10 the *forum non conveniens* doctrine is warranted. It appears that the pendency of this action
11 will have tolled the statute of limitations for filing an action in Pakistan. See Pakistan
12 Limitation Act, 1908, Part III, § 14(1) (excluding from the limitation period time spent
13 prosecuting an action in another court which, “from defect of jurisdiction, or other cause of
14 like nature, is unable to entertain it”). Thus, the imposition of conditions is not required.
15 See Carijano, 643 F.3d at 1234 (district courts are not required to impose conditions on
16 *forum non conveniens* dismissals where unnecessary to ensure an alternative forum).

17 **IV. CONCLUSION**

18 For the reasons stated above, IT IS HEREBY ORDERED THAT the instant action is
19 DISMISSED: (1) for lack of personal jurisdiction as to all named defendants, except Amjad
20 and Khawar, and (2) under the *forum non conveniens* doctrine as to all named defendants.

21 The Clerk shall close the file and terminate all pending matters.

22 IT IS SO ORDERED.

23 Dated: 03/30/2018

24 
SAUNDRA BROWN ARMSTRONG
25 Senior United States District Judge
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